

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

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|----------------------------|---|-----------------------|
| EDWIN L. SCOBY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. CIV-18-721-D |
| |) | |
| CORRECTION CARE SOLUTIONS, |) | |
| et al. |) | |
| |) | |
| Defendants. |) | |

ORDER

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, brought this action pursuant to 42 U.S.C. § 1983. This matter is before the Court for review of the Report and Recommendation [Doc. No. 12] (“Report”) issued on September 24, 2018, by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B). Upon reviewing the sufficiency of the Amended Complaint pursuant to 28 U.S.C. §1915(e) and 28 U.S.C. § 1915A(a) and (b), Judge Purcell recommends that the Amended Complaint [Doc. No. 10] be dismissed for failure to state a claim upon which relief can be granted and for failure to prosecute the case because Plaintiff failed to submit a second amended complaint by September 13, 2018. Report at 1, 2, 6, and 7.


Specifically, Judge Purcell noted that Plaintiff: (1) did not specify the individual(s) or entity responsible for depriving him of hearing aids or formally name a particular defendant; and, (2) his “factual allegations do not refer to any actions or omissions of an individual [d]efendant.” Report at 3, 5.

In his Report, Judge Purcell advised Plaintiff that any objection was to be filed by October 15, 2018, and cautioned Plaintiff that failure to timely object would result in waiver of appellate review of the recommended ruling. Report at 8.

On September 27, 2018, Plaintiff filed a Second Amended Complaint [Doc. No. 13]. The Court notes that Plaintiff deposited his Second Amended Complaint for mailing with the legal mail going out from his place of incarceration on September 11, 2018, two days before Judge Purcell's deadline and well before the Report was issued. Second Amended Complaint, Exhibit 2 [Doc. No. 13-2 at 2]. Therefore, the Court excuses Plaintiff's "untimely" filing.¹

Accordingly, the Report and Recommendation is not adopted, and Plaintiff's Second Amended Complaint is referred back to Judge Gary M. Purcell for further screening pursuant to 28 U.S.C. §1915(e) and 28 U.S.C. § 1915A(a) and (b).

IT IS SO ORDERED this 11th day of January 2019.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE

¹ Liberally construing Plaintiff's Second Amended Complaint, the Court concludes that Plaintiff has adequately named the following Defendants: (1) Joe Allbaugh, Director of Oklahoma Department of Corrections, (2) Raymond C. Smith, Warden of G.E.O. Group's Lawton Correctional Facility, (3) Erin Orlebeke, District Supervisor for Correct Care Solutions, and, (4) Jason Rankin, HAS, Supervisor of the medical department at Lawton Correctional Facility. Second Amended Complaint at 1. Plaintiff has also enhanced his factual allegations to include general dates, specific acts or omissions by individual defendants, and connection between supervisors and the alleged injuries. See Order [Doc. No. 6 at 4-6] ; Report at 2, 5-6.